



DEPARTMENT  
OF REVENUE

Vol. 13, No. 2

March-April 2004

# facts

## on TAX

### Key West Jewelry Dealer Arrested in Tax Theft Case

**T**he owner of a Key West jewelry store has been arrested on charges of failure to comply with Florida tax law, following a joint investigation by the Monroe County State Attorney's office and the Florida Department of Revenue (DOR).

The investigation probed allegations that Loukos Kongos, owner of the store, had engaged in tax fraud designed to avoid charging sales tax on taxable transactions, including allegations that he understated taxable sales in tax returns filed with the state.

Kongos, 47, of Key West, was arrested in January on several felony and misdemeanor charges related to violations of tax law. If convicted, Kongos faces up to five years in prison and up to \$5,000 in fines, plus repayment of tax, interest, penalty, and investigative costs. Kongos operates Capricorn Jewelry in Key West. Bond was set at \$500,000.

In court documents filed in the case, Revenue Department investigators said that case arose after a civil lawsuit filed by one of Kongos's customers turned

**KEY WEST, continued on page 2**

### Noncompliance Results in Penalties

**T**housands of taxpayers have begun to get notices that they owe \$50 penalty for failing to comply with sales tax-filing requirements. Under a 2003 law, taxpayers are not penalized for their first two failures to comply with filing requirements in a 12-month period, provided that they take prompt action to resolve the second compliance failure. However, the Department will assess penalty for the third failure – described by the statute as a “noncompliant filing event” but sometimes referred to as the “third strike” – as well as for subsequent “strikes.” Penalty is 10 percent of the tax due or, if no tax is due and the filing “strike” involves a failure to timely file a required return, the penalty is \$50.

DOR performance measurement systems show that a significant number of taxpayers already have used up part or all of their permissible “strikes.” For example, 53,560 taxpayers already had failed to file timely in the current fiscal year, while 41,802 had used up their “second strike” as of early April 2004.

In some cases, even large businesses with sophisticated tax-compliance systems have failed to fully comply with law, according to Jim Evers, director of the General Tax Administration Program. Evers noted that some large-tax payers have electronically sent tax payments timely but have not correctly filed the associated returns. Evers noted that these taxpayers face penalty if they do not take prompt steps to address their noncompliance.

“The purpose of the tiered-penalty statute is to reward taxpayers for fully complying with tax law and to ensure that the Department is consistent in enforcing penalty when taxpayers fail to comply,” said Jim Zingale, DOR executive director. “Given the information we have, we believe that the new tiered-penalty statute has not yet begun to impact filing behavior. But I am concerned that, for tens of thousands of taxpayers, there is no further room for error.”

#### Learn about tax requirements

There are a number of ways you can learn about tax filing and payment requirements, in order to avoid making errors that can result in penalties:

- Thoroughly read the instructions that you received with your coupon booklet. Electronic filers can download the instructions from DOR's Internet site at **[www.myflorida.com/dor/forms](http://www.myflorida.com/dor/forms)**
- Call or visit a DOR service center for person-to-person assistance. We have 25 locations throughout Florida.
- Attend a free tax seminar at your local DOR service center.
- Call the Department's tax assistance line at 800-352-3671 (toll-free) or 850-488-6800.

**PENALTIES, continued on page 2**

## Commercial Property Rentals Examined for Compliance

**T**housands of Florida businesses that engage in the rental of commercial property recently have received a second notice from the Department of Revenue about potential sales tax liabilities. The Department began focusing on sales tax issues regarding commercial rental during the 2003 tax amnesty program, mailing inquiries to more than 43,000 businesses seeking further information.

The Department contacted these businesses after comparing sales-tax registration databases with information from property tax records on rented commercial properties. DOR's efforts to identify and address patterns of compliance with tax law was assisted by the new data-analysis capabilities of the Department's integrated tax-administration computer system, called the SUNTAX system.

As of early April, the Department had collected more than \$27 million in sales tax, penalty, and interest as a result of these inquiries.

However, only about half of all businesses contacted had replied to the Department by March 2004. DOR is now following up with these businesses to determine whether they have complied with tax law. Businesses that fail to reply to these contacts face additional enforcement action, possibly including audits, collection activities, and, in cases where taxpayers fail to comply with the law after DOR has made repeated contacts, establishment of tax liens.

### Department Looks at Tax Compliance in Dry-Cleaning Industry

In late March, the Department began a new enforcement effort to identify and address patterns of tax law compliance in the dry-cleaning industry. Using SUNTAX and related technologies, DOR will compare data drawn from Internal Revenue Service information with data from the Department's own tax registrations. Soon the Department will reach out to businesses identified as potentially not in compliance with tax law, asking them to review their tax records and take steps to address noncompliance.

---

#### *PENALTIES, continued from page 1*

Be aware that the volume of telephone calls to the Department is heavy during the several days prior to the 20th day of the month, which is the filing deadline for sales tax. You should experience shorter hold times if you call at other times during the month.

---

#### *KEY WEST, continued from page 1*

up evidence of tax fraud. In issuing a judgment in the civil case, Judge Wayne Miller found that Kongos had engaged in fraudulent practices to avoid collecting sales tax on a sale. Under state law, tax is due on sales made in the state, but sales tax is not due if an otherwise taxable item is shipped out of state to a buyer. According to the judge's ruling, Kongos had illegally agreed to sell expensive jewelry tax-free to visiting clients, allow the clients to take possession of the jewelry in Key West, and later ship clients inexpensive trinkets at their out-of-state addresses. Kongos would then claim that the trinket that was shipped was the expensive piece of jewelry, and thus no tax was due.

During a subsequent joint investigation, State Attorney's Office investigators and DOR investigators searched Kongos's business and seized invoices, financial records, mailing and shipping records, and computers. DOR investigators researched the records and determined that Kongos had underrepresented taxable sales at his business between January 2000 and April 2003 by more than \$400,000.

Revenue investigators also found 30 out-of-state customers who admitted taking their purchases with them at the time of purchase, thus making the transactions taxable. However, no tax had been collected or remitted on these sales. Revenue investigators charged that, in all, Kongos had stolen or failed to collect \$36,183 in sales taxes and had repeatedly filed false and fraudulent tax returns.

"To be fair, tax law must apply uniformly to all businesses," said Jim Zingale, executive director of the Revenue Department. "Tax cheats steal money that the public pays to support vital public services, such as law enforcement and education. They also steal a competitive advantage over honest businesspeople who pay their taxes. The Department of Revenue cannot and will not allow this to occur."

If you have information about tax theft, please call the Florida Department of Revenue investigations office in Key West at 305-513-3295.

### **Subscribe to Facts on Tax by E-Mail**

You can receive *Facts on Tax* updates via e-mail. To subscribe, go to our Internet site at [www.myflorida.com/dor/taxes](http://www.myflorida.com/dor/taxes) and click on "Join our mailing list."

If you wish to stop receiving a paper copy of *Facts on Tax*, you must request it separately.

Call Kathryn Criscola at 850-488-0108 or send an e-mail to [criscolk@dor.state.fl.us](mailto:criscolk@dor.state.fl.us). Be sure to give your name and address as it appears on your mailing label.

## Rules Adopted by Governor and Cabinet for the Period: January 1, 2004 - February 29, 2004

### Corporate Income Tax

#### 12C-1.0187 Credits for Contributions to Nonprofit Scholarship Funding Organizations

This rule is created to provide guidelines on how to apply electronically to the Department for credits for contributions to nonprofit scholarship funding organizations and guidelines on how the Department will confirm receipt of an electronic application and notify the applicant of the amount of the approved credit. The rule also provides guidelines for approved contributions and on when an approved credit must be used, including any unused credit carried forward, and when the credit may be conveyed, assigned, or transferred to another entity. The rule states that the Department of Education is required to submit an annual list of eligible nonprofit scholarship funding organizations to the Department of Revenue.

Adopted: 2/10/04

Effective: 3/15/04

#### 12C-1.0222 Returns; Time and Place for Filing

This rule is amended to provide definitions of "just cause" and "reasonable cause" for purposes of granting extensions of time to file Florida corporate income tax returns.

Adopted: 2/10/04

Effective: 3/15/04

#### 12C-1.051 Forms

The amendments to this rule adopt, by reference, changes to Form F-1160, *Application for Corporate Income Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations (SFOs)*, and remove obsolete Form F-1120P, *Payment Coupon*.

Adopted: 2/10/04

Effective: 3/15/04

## Tax Information Publications

The following is a list of Tax Information Publications (TIPs) issued by the Department from February 10 to April 12, 2004. To receive a copy of any of these publications, visit our Internet site at [www.myflorida.com/dor](http://www.myflorida.com/dor) or call Taxpayer Services, Monday – Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671 or 850-488-6800.

#### TIP #04A01-02

*Notice to Out-of-State Dealers Who Collect Rental Car Surcharge*

**Date Issued: February 27, 2004**

#### TIP #04A19-02

*Electronic Filers Will No Longer Receive Communications Services Tax Returns (Form DR-700016)*

**Date Issued: March 25, 2004**

#### TIP #04C02-01

*Exemptions for Intangible Tax Have Been Increased*

**Date Issued: March 15, 2004**

#### TIP #04B07-01

*Solid Mineral Tax Rates for Year 2004*

**Date Issued: March 31, 2004**

## Technical Assistance Advisements

Technical Assistance Advisements (TAAs) are written statements issued by the Department of Revenue, setting forth the Department's position on the tax consequences of a specific transaction or event under applicable statutes and rules. The TAAs are issued in response to written requests by taxpayers. Since the situations could apply to other taxpayers with the same situation, *Facts on Tax* publishes summaries of the TAAs. All TAAs listed in this publication are maintained in full text in the Florida Department of Revenue Tax Law Library. Administrative rules in the library are updated quarterly to reflect revisions listed in the publication. The library includes seven years of Florida tax statutes, administrative rules affecting taxes, all technical advisories issued by the Department, and Tax Information Publications (TIPs). The library can be accessed from [www.myflorida.com/dor](http://www.myflorida.com/dor). Computer access to the library is also available in your local Department of Revenue service center.

**TAX:** Sales and Use Tax  
**TAA NUMBER:** 04A-003  
**ISSUE:** Surtax

**STATUTE CITE(S):** Section 212.054, F.S.

**RULE CITES(S):** 12A-15.003 and 12A-1.0015, F.A.C..

**QUESTION:** The taxpayer is a Florida business providing document reproduction services, which are subject to Florida sales tax, primarily to business and governmental agencies located in the State of Florida. The taxpayer believes that title to the merchandise passes at the production facility because the customer has the option to take possession at the facility or arrange for delivery through an independent common carrier. The taxpayer's customers may be in counties other than the county where the taxpayer operates its facility. Based on the foregoing, the taxpayer believes that the surtax rate to be used is the one in effect in the county where the taxpayer's production facility is located. Is this correct?

**ANSWER:** Rule 12A-15.003(4)(a), F.A.C., provides that "[a] dealer who makes sales of tangible personal property is required to collect surtax when the taxable item of tangible personal property is delivered within a surtax county. The dealer is required to collect surtax at the rate imposed by the **county where the delivery occurs**, whether the delivery is made directly by the dealer or by a manufacturer or wholesaler who delivers the property to the purchaser on behalf of the dealer .... (emphasis added).

Therefore, the option of delivery methods is not a factor in calculating the surtax. It also makes no difference that delivery is made by the taxpayer's delivery service or by common carrier. It is the point of delivery that is the determining factor.

**TAX:** Sales and Use Tax  
**TAA NUMBER:** 04A-004

**ISSUE:** Newspaper delivery charges

**STATUTE CITE(S):** Sections 212.02 and 212.05, F.S.

**RULE CITE(S):** 12A-1.045, F.A.C.

**QUESTION:** Are newspaper delivery charges subject to sales tax when the charge is separately stated and can be avoided by the customer?

**ANSWER:** No. The company is not required to collect sales tax on the charge for newspaper delivery by independent carriers if:

- At the time of the initial subscription or subsequent renewal, the subscriber is informed of the carrier delivery charge and mail delivery charge.
- At the time of the initial subscription or subsequent renewal, the subscriber is informed that the delivery charge can be avoided by an election to either pick up the newspapers at a distribution center or to receive the newspapers by mail.
- The carrier delivery charge is separately stated on the invoice.

**TAX:** Sales and Use Tax  
**TAA NUMBER:** 04A-005

**ISSUE:** Real property lease at airport

**STATUTE CITE(S):** Sections 212.031 and 215.26, F.S.

**RULE CITE(S):** 12A-1.014 and 12A-1.070, F.A.C.

**QUESTION:** Does the airport property exemption described by Rule 12A-1.070(1)(a)6., F.A.C., apply to the taxpayer, and if so, is the taxpayer entitled to a refund of sales tax?

**ANSWER:** Based on the documentation and facts provided by the taxpayer, the property at issue would qualify for the exemption provided by section 212.031(1)(a)7., F.S., and described by Rule 12A-1.070(1)(a)6., F.A.C., pending verification by the Department of Revenue.

However, the taxpayer must secure a refund from the dealer and not the Department of Revenue. If the dealer is not willing to refund the tax to the purchaser, the dealer may issue an assignment of rights to the taxpayer in lieu of a refund. This would allow the taxpayer to apply for a refund of the overpaid taxes directly from the Department.

**TAX:** Sales and Use Tax  
**TAA NUMBER:** 04A-007

**ISSUE:** Use tax on boat

**STATUTE CITE(S):** Sections 212.02(15)(a), 212.06(8)(a), and 212.06(10), F.S.

**RULE CITE(S):** 12A-1.007(2)(a), F.A.C.

**QUESTION:** Is a boat purchased and used outside of Florida subject to Florida's use tax upon importation into Florida?

**ANSWER:** If a boat purchased outside of Florida is used in a taxing jurisdiction or jurisdictions for six months or longer under conditions that would cause that jurisdiction to impose tax, the boat may then be imported into Florida without being subject to Florida's use tax.

**TAX:** Sales and Use Tax  
**TAA NUMBER:** 04A-008

**ISSUE:** Lease or license to use real property by concessionaire

**STATUTE CITE(S):** Section 212.031, F.S.

**RULE CITE(S):** 12A-1.070, F.A.C.

**QUESTION:** A city owns real property in fee simple and leases or licenses it to a beach concessionaire that rents tangible personal property. Is the transaction subject to sales tax pursuant to section 212.031, F.S.?

**ANSWER:** Yes. The agreement between the city and the concessionaire is a taxable license to use real property. As defined in s. 212.02(2), (10), and (12), F.S., the city is a person engaged in the business of granting a license for the use of real property. Specifically, the city and the concessionaire voluntarily entered into the agreement via a formal proposal process for the license

of the real property, which the city owned in fee simple. There was no city ordinance or other municipal mandate requiring the agreement or the license fees. Thus, like Dade County in IPC Sports, Inc. v. Department of Revenue, 829 So. 2d 330 (Fla. 3rd DCA 2002) and unlike Volusia County in Lloyd Enterprises, Inc. v. Department of Revenue, 651 So. 2d 735 (Fla. 5th DCA 1995), the city can legally enter into leases or licenses for the use of real property it owns for the purpose of providing a beach concession of tangible personal property.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-009

**ISSUE:** Medical products - blood collection tubes

**STATUTE CITE(S):** Section 212.08(2), F.S.

**RULE CITE(S):** 12A-1.20, F.A.C.

**QUESTION:** What is the taxable status of Vacutainer blood collection tubes used by licensed physicians?

**ANSWER:** Blood collection tubes that work in conjunction with hypodermic needles and hypodermic syringes (which are specifically exempt) would also be exempt from tax. Further, because the tubes contain anticoagulants and chemicals used to separate the plasma, the exemption for "chemical compounds and test kits used for the diagnosis or treatment of human disease, illness, or injury" would also apply.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-010

**ISSUE:** Nonresidential management and cleaning services

**STATUTE CITE(S):** Sections 212.05(1)(i)1.b., and 212.08(7)(v), F.S.

**RULE CITE(S):** N/A

**QUESTION:** A company provides housekeeping management services and nonresidential cleaning services for hospitals. The company may provide one or both of the services to a hospital under separate contracts. Is the separate management agreement exempt from sales and use tax as a professional service pursuant to s. 212.08(7)(v), F.S., or subject to sales and use tax as nonresidential cleaning service pursuant to s. 212.05(1)(i)1.b., F.S.?

**ANSWER:** The management agreement is purely supervisory or administrative in nature. No physical cleaning activities are performed under this contract. This type of contract would be for the provision of professional services and would not be subject to tax pursuant to s. 212.08(7)(v), F.S. The taxpayer's decision to use two separate contracts - one for taxable nonresidential cleaning services and one for exempt management services - is appropriate.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-011

**ISSUE:** Medical (anesthesia) products

**STATUTE CITE(S):** Section 212.08(2), F.S.

**RULE CITE(S):** N/A

**QUESTION:** What is the taxable status of certain anesthesia products sold in Florida?

**ANSWER:** In general, any medical product sold or rented to a patient pursuant to a doctor's prescription or orders is exempt from tax. Single use "RX" products dispensed and consumed during medical procedures for the benefit of a patient would also be exempt. A medical product incorporated into a patient, either temporarily or permanently, by a healthcare practitioner would be exempt from tax. Medical devices, machinery, and equipment that

are purchased by healthcare practitioners for use in their practice are generally taxable. The exception is that certain medical products and certain orthopedic equipment are specifically exempt from tax, regardless of whether a prescription is involved and regardless of whether the product is sold to a patient or to a healthcare practitioner.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-012

**ISSUE:** Expressway authority/Public works

**STATUTE CITE(S):** Section 212.08(6), F.S.

**RULE CITES(S):** 12A-1.038(4), 12A-1.094, F.A.C.

**QUESTION:** Do the procedures for the purchase of materials set out in the contract for the construction of a bridge and roadway meet the legal requirements for the expressway authority to purchase the materials tax-exempt?

**ANSWER:** Yes, if the controlling documents provide:

- The authority issues its own purchase orders directly to the vendors.
- The purchase orders include the authority's *Consumer's Certificate of Exemption* number and the authority will supply a copy of the certificate to the vendors.
- The vendors invoice the authority directly.
- The authority issues its checks to the vendors directly.
- The authority takes title to the materials from the vendor and assumes liability for the materials when they are delivered to the job site.
- The authority assumes risk of loss for the materials upon delivery, which is clearly established by the requirement in the controlling documents that the authority reimburse the contractor for premiums paid for insurance against loss or damage and the authority is named as the insured party to receive proceeds in case of loss of the items purchased tax-exempt.
- The remaining terms of the documents do not prevent the conclusion that the authority rather than the contractor is, in substance as well as form, the purchaser of the materials.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-013

**ISSUE:** New business exemption

**STATUTE CITE(S):** Section 212.08(5)(b), F.S.

**RULE CITE(S):** 12A-1.096, F.A.C.

**QUESTION:** The taxpayer will purchase and install machinery and equipment necessary to produce non-structural architectural metal roofing. Is this exempt from sales and use tax as a new business, pursuant to s. 212.08(5)(b), F.S.? The taxpayer previously produced general-purpose roof deck components for structural building purposes.

**ANSWER:** The process necessary to manufacture the taxpayer's existing and additional products is essentially the same -- cold roll-forming steel sheet. However, the differences in the products are more than mere changes in size, style, or model line. Most significantly, structural roof decking is commonly sold to building contractors, while non-structural metal roofing is sold to roofing contractors. The use of one product absolutely cannot be substituted for the other. Therefore, the production of non-structural architectural metal roofing represents an economic activity that is distinct and separate from the prior roof deck components. Accordingly, the taxpayer qualifies for exemption as a new business.

**TAX:** Sales and Use

**TAA NUMBER:** 04A-014

**ISSUE:** Cleaning services

**STATUTE CITE(S):** Sections 212.02, 212.05, 212.054, 212.055, 212.06, 212.07, 212.08, and 212.21, F.S.

**RULE CITE(S):** 12A-1.006, 12A-1.0091, 12A-1.016, and 12A-1.051, F.A.C.

**QUESTIONS:** Are separately stated charges for specified services and combinations of services subject to sales tax? Does it matter whether the customers are residential or nonresidential?

**ANSWERS:** The answers assume that all carpets are installed with tacks, glue, or other permanent means, and are intended to serve as the finished floor. The answers further assume that whatever is left behind of the deodorizer (or sanitizer) is minimal, unintentional, and of brief duration. The answers apply to both residential and non-residential customers unless noted otherwise.

- A. **Carpet cleaning.** The charge to the customer for cleaning services is not subject to tax. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.
- B. **Carpet cleaning and carpet stain protection.** The charges to the customer for cleaning and stain protection services are not subject to tax, regardless of whether the charges for the two services are separately stated. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform these services.
- C. **Carpet deodorizing.** The charge made to the customer for deodorizing (or sanitizing) is not subject to tax. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.
- D. **Furniture cleaning.** The cleaning service is not taxable if the taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. The taxpayer should pay tax to its suppliers on materials and supplies that are purchased as overhead items and used to perform this service.
- E. **Furniture cleaning and stain protection.** The charges made to the customer for both services are subject to tax, regardless of whether such charges are separately stated. The taxpayer should not pay tax on the purchase of the protectant. The taxpayer should pay tax on materials and supplies purchased as overhead items when they are used in performing the services but do not become incorporated or attached to the furniture.
- F. **Furniture deodorizing.** The charge made to the customer for deodorizing (or sanitizing) is not taxable if the taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. The taxpayer should pay tax to its suppliers on materials and supplies that are purchased as overhead items and used to perform this service.
- G. **Carpet cleaning and furniture cleaning.** The charge to the customer for carpet cleaning services is not subject to tax. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning service. The furniture cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. The taxpayer should pay tax to its suppliers on materials and supplies that are purchased as overhead items and used to perform the furniture cleaning service.

- H. **Carpet cleaning, carpet stain protection, and furniture cleaning.** The charges to the customer for carpet cleaning and stain protection services are not subject to tax, because they are separately stated from the tangible personal property elements of the contract. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning and stain protection services. The furniture cleaning service is not taxable if the Taxpayer maintains records indicating that no tangible personal property was furnished and incorporated or attached to the furniture. The taxpayer should pay tax to its suppliers on materials and supplies that are purchased as overhead items and used to perform the furniture cleaning service.
- I. **Carpet cleaning, furniture cleaning, and furniture stain protection.** The charge to the customer for carpet cleaning services is not subject to tax. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning service. The charges made to the customer for both furniture cleaning and furniture stain protection services are subject to tax, regardless of whether such charges are separately stated. Purchase of the protectant is not taxable to the taxpayer when purchased. Materials and supplies used in performing the furniture cleaning and furniture stain protection services but which do not become incorporated or attached to the furniture are taxable to the taxpayer when purchased as overhead items.
- J. **Carpet cleaning, carpet stain protection, furniture cleaning and furniture stain protection.** The charges to the customer for carpet cleaning and carpet stain protection services are not subject to tax, regardless of whether the charges for the two services are separately stated. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the carpet cleaning and carpet stain protection services. The charges made to the customer for both furniture cleaning and furniture stain protection services are subject to tax, regardless of whether such charges are separately stated. The taxpayer should not pay tax on the purchase of the protectant. Materials and supplies used in performing the furniture cleaning and furniture stain protection services but which do not become incorporated or attached to the furniture are taxable to the taxpayer when purchased as overhead items.
- K. **Ceramic tile floor and grout cleaning.** Residential customers - see response A., above. Nonresidential customers - The charge to a customer for ceramic tile floor and grout cleaning is subject to tax per section 212.05(1)(i)1.b., F.S. The taxpayer should pay tax to its suppliers on purchases of materials and supplies used to perform this service.
- L. **Ceramic tile floor cleaning and grout stain protection.** Residential customers - See response B., above. Nonresidential customers - The charge to a customer for ceramic tile floor and grout cleaning is subject to tax per s. 212.05(1)(i)1.b., F.S. The taxpayer should not charge tax to its customer for the stain protection service. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform the stain protection service.
- M. **Air conditioning and heating system cleaning.** See response A., above.
- N. **Water restoration services.** The charge to the customer for water restoration services is not subject to tax. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.

- O. **Sale and installation of wall-to-wall carpeting.** The taxpayer should not charge the customer tax for the sale and installation of the carpeting, regardless of whether charges for material and labor are separately stated. The taxpayer should pay tax to its suppliers on all purchases of materials and supplies used to perform this service.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-018

**ISSUE:** Trade show exhibitors

**STATUTE CITE(S):** Sections 212.06, 212.18, and 212.0596, F.S.

**RULE CITE(S):** Rule 12A-1.0015, F.A.C.

**QUESTION 1:** Are trade show exhibitors required to collect tax on orders taken from nonresidents at the trade show, when the property is to be delivered outside the state by U.S. Mail or common carrier and the exhibitor does not receive full payment at the show?

**ANSWER 1:** No. Orders taken for goods that will be delivered outside Florida by U.S. Mail or common carrier qualify for an exemption under section 212.06(5)(a), F.S.

**QUESTION 2:** Same as Question 1, but the exhibitor does receive full payment for the goods at the show.

**ANSWER 2:** No, tax is not due on goods that will be delivered outside of Florida by U.S. Mail or common carrier, regardless of whether the seller receives full payment for the goods in Florida.

**QUESTION 3:** Are trade show exhibitors required to collect tax on orders taken from Florida residents at the trade show, when the property is to be delivered into Florida by U.S. Mail or common carrier, but the exhibitor does not receive full payment at the show?

**ANSWER 3:** Yes. Section 212.18(3)(e), F.S., provides that an exhibitor that is authorized to make retail sales at a trade show is required to register as a dealer and collect tax. Section 212.06(1)(a), F.S., states that the full amount of tax on a sale made under any kind of deferred payment plan is due at the moment of the transaction.

**QUESTION 4:** Same as Question 3, but the exhibitor does receive full payment for the goods at the show.

**ANSWER 4:** Yes, based on the explanation given in the answer to Question 3.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-019

**ISSUE:** Purchases by golf tournament sponsor

**STATUTE CITE(S):** Section 212.04, F.S.

**RULE CITE(S):** 12A-1.005, F.A.C.

**QUESTION:** Are goods and services, purchased by a golf tournament sponsor and provided to pro-am participants as part of their package, subject to the sales tax?

**ANSWER:** Yes. The sponsor is the end consumer because the purchase of taxable items involves a separate and distinct tax privilege from the sale of admission to the pro-am participant and is not a resale of the items purchased.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-021

**ISSUE:** Software licenses

**STATUTE CITE(S):** Sections 212.05 and 212.08, F.S.

**RULE CITE(S):** 12A-1.032, F.A.C.

**QUESTION:** Is the specific transaction described below a sale of customized software and therefore not subject to sales tax?

**ANSWER:** The taxpayer at the customer's request, modifies the prepackaged [software] program to the customer's specification.

**As long as the taxpayer charges the customer for a single transaction**, the charge would be for a professional service per section 212.08(7)(v), F.S., and Rule 12A-1.032, F.A.C., and is exempt from tax. However, if the taxpayer licenses canned software to the customer and later modifies or customizes it, the charge for the initial license of canned software would be subject to tax, since the sale is only for "modifiable" or "customizable" software, not modified or customized software, as required by Rule 12A-1.032, F.A.C.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-022

**ISSUE:** Sales of chinchillas and exotic birds

**STATUTE CITE(S):** Sections 212.07(5)(a), 212.02(29), and 212.02(28), F.S.

**RULE CITE(S):** N/A

**QUESTION:** Are sales of chinchillas and exotic birds exempt from sales tax when sold by the breeder or producer?

**ANSWER:** Per section 212.07(5)(a), F.S., the gross proceeds from the sale in this state of livestock, poultry, and other farm products direct from the farm are exempt from sales tax if such sales are made directly by the producers. Chinchillas and exotic birds are neither poultry nor livestock, and the breeders or producers of such animals are not farmers. Therefore, the gross proceeds from the sale of these animals are not exempt from sales tax.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-024

**ISSUE:** Shopper

**STATUTE CITE(S):** Section 212.08(7)(w), F.S.

**RULE CITE(S):** 12A-1.008, F.A.C.

**QUESTION:** Is the provided publication exempt under the provisions of section 212.08(7), F.S.?

**ANSWER:** Yes. The publication is distributed on a regular basis through the mail and is free of charge. It consists primarily of advertising. Based on the information provided and on a review of the included sample copies, the publication satisfies the exemption requirements of s. 212.08(7)(w), F.S.

**TAX:** Sales and Use Tax

**TAA NUMBER:** 04A-025

**ISSUE:** Lease vs. financial arrangement

**STATUTE CITE(S):** Section 212.031, F.S.

**RULE CITE(S):** 12A-1.070, F.A.C.

**QUESTION:** Is the distribution and leaseback of the described facilities exempt from Florida sales tax as a financing arrangement/mortgage?

**ANSWER:** In reviewing all of the relevant documents related to the transaction, it was determined that this particular transaction was more akin to a "financing arrangement" than a "lease" for purposes of Chapter 212, F.S.

The following factors were considered during our determination:

- Recognizing the clear and unambiguous language of the relevant documents while keeping in mind that substance is always preferred over form.
- Recognizing that, for there to be a mortgage, there must be a debt secured thereby.

- Examining if “rent” is fixed to debt service, as opposed to the rental market value of the property.
- Determining whether the buyer/lessee is a single purpose financing corporation created prior to the transaction in order to facilitate the loan process
- Examining whether the short-term and long-term risks pass to the “so-called buyer.”
- Recognizing that the proper recording of a “debt” requires the transfer of title shortly after the end of a “lease” term.

Other factors exist; however, these six were considered most relevant under the specific facts presented.

**TAX:** Documentary Stamp Tax

**TAA NUMBER:** 04B4-001

**ISSUE:** Execution of agreements

**STATUTE CITE(S):** Sections 201.08(1), (6) and (7), F.S.

**RULE CITE(S):** 12B-4.054(4), F.A.C.

**QUESTION:** Is execution of a contingent lending agreement and mortgage and security agreement within the State of Florida, which does not contain any specific dollar amount or any other “sum certain,” taxable?

**ANSWER:** None of the documents submitted contain a readily ascertainable amount upon which documentary stamp tax can be imposed. Therefore, the execution of the agreements would not be subject to documentary stamp tax.

**TAX:** Documentary Stamp Tax

**TAA NUMBER:** 04B4-002

**ISSUE:** Deeds

**STATUTE CITE(S):** Section 201.02, F.S.

**RULE CITE(S):** N/A

**QUESTION:** Is a transfer of unencumbered real property from partners to a general partnership subject to tax?

**ANSWER:** No. With the decision in Kuro, Inc. v. State of Florida Department of Revenue, 713 So. 2nd 1021 (Fla. 2nd DCA 1998), since the property is unencumbered and the owners of the real property are also the same partners in the partnership, Florida documentary stamp taxes would not be due.

**TAX:** Documentary Stamp Tax

**TAA NUMBER:** 04B4-003

**ISSUE:** Tax limit on unsecured obligations

**STATUTE CITE(S):** Section 201.08(1), F.S.

**RULE CITE(S):** N/A

**QUESTION:** Will any additional tax above the maximum cap of \$2,450 be due if a document is subsequently filed or recorded in Florida?

**ANSWER:** If a premium financing agreement or other evidence of indebtedness is not filed or recorded in Florida, but is subsequently filed or recorded in Florida on which only the maximum cap of \$2,450 documentary stamp tax has been paid, additional tax is required up to the total amount of tax due that exceeds the cap of \$2,450.

**TAX:** Documentary Stamp Tax

**TAA NUMBER:** 04B4-004

**ISSUE:** Conveyance of unencumbered property

**STATUTE CITE(S):** Section 201.02(1), F.S.

**RULE CITE(S):** Rules 12B-4.014(2) and 12B-4.013(7), F.A.C.

**QUESTION:** Will a transfer of unencumbered commercial property by the sole member to the limited liability company be subject to tax?

**ANSWER:** In light of the ruling of Kuro v. Dept. of Revenue, the transfer will only be subject to minimal documentary stamp tax.

**TAX:** Corporate Income Tax

**TAA NUMBER:** 04C1-001

**ISSUE:** Sales apportionment

**STATUTE CITE(S):** Section 220.15(5)(c), F.S.

**RULE CITE(S):** N/A

**QUESTION:** How should the specified items of income be represented in the Florida sales factor of a financial organization?

**ANSWER:** The specified items of income should be represented in the Florida sales factor of the financial organization as directed by s. 220.15(5)(c), F.S.

**TAX:** Corporate Income Tax

**TAA NUMBER:** 04C1-002

**ISSUE:** Request for authority to discontinue consolidated filing

**STATUTE CITE(S):** Sections 220.131(1) and 220.131(3), F.S.

**RULE CITE(S):** 12C-1.0131, F.A.C.

**QUESTION:** May a consolidated group be granted permission to cease filing Florida consolidated corporate income tax returns based upon changes in law or circumstances?

**ANSWER:** The consolidated group was granted permission to cease filing Florida consolidated corporate income tax returns based on the rule provisions which address changes in law or circumstances.

**TAX:** Nonrecurring Intangible Tax

**TAA NUMBER:** 04C2-001

**ISSUE:** Leasehold mortgages

**STATUTE CITE(S):** Sections 199.023(1), 199.032, 199.133(1)(2), and 196.199(1), F.S.

**RULE CITE(S):** N/A

**QUESTION:** Are nonrecurring intangible taxes imposed on a leasehold mortgage securing a note when the leasehold interest is purchased?

**ANSWER:** Long-term leasehold interests are generally not considered real property for purposes of nonrecurring intangible tax. The obligation secured by a mortgage on this leasehold interest does not require payment of the tax.

**facts**  
**TAX**

Facts on Tax is published by:

**COMMUNICATION SERVICES**  
**5050 W. TENNESSEE STREET**  
**TALLAHASSEE, FL 32399-0100**

GT-000003 R. 04/04

If you have questions or suggestions about this publication, contact Kathryn Criscola at 850-488-0108. If you have specific tax-related questions, call Taxpayer Services at 800-352-3671 or 850-488-6800.